

Personnel

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PERSONNEL PROGRAM FOR LOCAL HEALTH DEPARTMENTS

Purpose Of The Personnel Program

The Department for Public Health administers a personnel program for local health departments in Kentucky. The purpose of the personnel program is to promote the recruitment of qualified individuals for the public health workforce, retain employees with a program of benefits and compensation, and protect the right of employees during their service.

How The Personnel Program Is Administered

Administrative Regulations [902 KAR 8:040 through 902 KAR 8:140](#) have been promulgated to provide for the various aspects of the personnel program for fifty-three (53) of Kentucky's fifty-six (56) health departments. The Louisville Metro Health Department, the Lexington-Fayette County Health Department, and the Northern Kentucky District Health Department have a separate personnel program based on their respective authorizing legislation.

Administrative Regulations Governing The Merit System

The local health department personnel program is governed by administrative regulations. A brief description of each of the major administrative regulations is summarized below. The full administrative regulations can be accessed on the internet by clicking on the listings, which are active links.

- [902 KAR 8:040*](#)
DEFINITION OF TERMS APPLICABLE FOR THE PERSONNEL PROGRAM FOR LOCAL HEALTH DEPARTMENTS. This administrative regulation provides definitions of the various terms that are used to describe the personnel actions.
- [902 KAR 8:060](#)
CLASSIFICATION AND COMPENSATION PLANS FOR LOCAL HEALTH DEPARTMENTS. A comprehensive position Classification Plan has been established by the department with the advice of the Local Health Department Employment Personnel Council and the local health departments. This administrative regulation sets forth the policies and procedures for establishing the classification and compensation plans for local health departments. The Classification Plan establishes for each class of positions:
 - (a) A title;
 - (b) A description of the duties and responsibilities;
 - (c) The minimum requirements of training and experience; and
 - (d) Other qualifications necessary or desirable for the satisfactory performance of the duties of the class.
- [902 KAR 8:070](#)
RECRUITMENT, EXAMINATION, AND CERTIFICATION OF ELIGIBLES FOR LOCAL HEALTH DEPARTMENTS. This administrative regulation provides for a recruitment program and establishes procedures and standards for the recruitment examination and certification of individuals for potential employment by local health departments.
- [902 KAR 8:080](#)
INITIAL APPOINTMENT, PROBATIONARY PERIOD, LAYOFFS, PERFORMANCE EVALUATION, AND THE RESIGNATION OF EMPLOYEES OF LOCAL HEALTH DEPARTMENTS. This administrative regulation establishes employment categories of permissible appointments and employment probationary periods, and the employee evaluation process.

- [902 KAR 8:090](#)
PROMOTION, TRANSFER, AND DEMOTION OF LOCAL HEALTH DEPARTMENT EMPLOYEES. This administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees.
 - [902 KAR 8:096](#)
LOCAL HEALTH DEPARTMENT EMPLOYEE PERFORMANCE EVALUATION PROGRAM. This administrative regulation establishes the requirements and the procedures for the evaluation of local health department employee performance. All local health departments that are currently utilizing 902 KAR 8:080 may initiate the change to the process as provided for in 902 KAR 8:096 by notifying the Local Health Personnel Section by the beginning of the next fiscal year.
 - [902 KAR 8:100](#)
DISCIPLINARY PROCEDURES APPLICABLE FOR LOCAL HEALTH DEPARTMENT EMPLOYEES. This administrative regulation establishes separations and disciplinary procedures applicable to a local health department. These include:
 1. employee behavior for which an appointing authority may take disciplinary action,
 2. the progressive nature of disciplinary action, and
 3. steps to be taken when the disciplinary action is demotion, suspension and/or dismissal.
 - [902 KAR 8:110](#)
DISCIPLINARY APPEAL PROCESS APPLICABLE FOR LOCAL HEALTH DEPARTMENT EMPLOYEES. KRS 211.1752 provides for an appeal process for employees who are disciplined, or for applicants or employees who allege discrimination in personnel actions. This administrative regulation provides for the specific appeal process.
 - [902 KAR 8:120](#)
LEAVE PROVISIONS APPLICABLE TO EMPLOYEES OF LOCAL HEALTH DEPARTMENTS. This administrative regulation establishes work hours, leave and compensatory time provisions for employees of local health departments.
 - [902 KAR 8:130](#)
PARTICIPATION OF LOCAL HEALTH DEPARTMENT EMPLOYEES IN POLITICAL ACTIVITIES. This administrative regulation establishes guidelines for employee political activity.
- [902 KAR 8:140](#)
APPOINTMENT OF A HEALTH OFFICER OR A HEALTH DEPARTMENT DIRECTOR OF A LOCAL HEALTH DEPARTMENT.
This administrative regulation details the procedures for appointment or removal of a health department director or officer.

Local Health Department Personnel Legislation And Council

The enabling legislation [KRS 211.1752](#) established the Local Health Department Employment Personnel Council. The Local Health Personnel Merit System is advised by the Council, which is composed of five (5) members appointed by the Secretary of the Cabinet for Health and Family Services. Members of the council serve for a term of three (3) years.

The Council is attached to the Department for Public Health for administrative purposes and has the following responsibilities:

1. Advise the Cabinet on administration of the Local Health Department Personnel Program pursuant to [KRS Chapter 211](#);

2. Hear appeals in accordance with [902 KAR 8:110](#), Sections 1 and 2 or designate a hearing officer:
 - a. Applicants for positions for which examinations are being or have been conducted;
 - b. Eligible applicants on registers;
 - c. Classified employees who have been dismissed, demoted, or suspended for cause.
3. Hear appeals regarding discrimination in a personnel action involving an agency employee or an applicant for employment, and
4. Consider and act upon matters that may be referred to the Council by the Department.

Local Health Department Personnel Support Services From DPH

The Local Personnel Section is the administrative unit within the Department for Public Health (DPH) that carries out the day-by-day administrative support for local health departments. This includes interpreting the administrative regulations regarding personnel actions, reviewing applications to determine if applicants meet the required minimum requirements for a particular position, approving salary adjustments, overseeing the statewide computerized personnel system, and providing training for supervisory and management staff.

Local Health Department Procedural Instructions For Personnel Actions

The DPH, Local Personnel Section maintains a personnel management information system through Custom Data Processing. The personnel management information system connects each local health department with the Local Personnel Branch. An instructional manual "The Local Health Department Personnel System Reference for Personnel Actions" has been prepared to assist in data entry for the various computer screens. The computer screens provide for the appointment of employees and maintains a permanent record of all personnel actions that occur during employment.

Local Health Departments' Responsibilities Regarding Personnel

- Employees' Access to the "Administrative Regulations applicable to county and district health departments of Kentucky" - A current copy shall be available in local health departments and every employee shall have access to a copy of the regulations at <http://chfs.ky.gov/dph/info/lhd/lhpb.htm>. Other Personnel Policies and Procedures Developed by Local Boards - Boards of health may develop other personnel policies and procedures as are necessary to carry out an effective personnel administration program providing such policies and procedures are consistent with the LHD Merit System Administrative Regulations.
- Maintenance of File of Current Personnel Policies - All local health departments shall maintain a file of current personnel policies and procedures under which they operate.

Personnel Website

The Department for Public Health LHD Personnel maintains a website on the Internet: <http://chfs.ky.gov/dph/info/lhd/lhpb.htm>. This personnel website provides classification information, administrative regulations applicable to local health departments, appeal form, LHD memos, advertising templates, vacancy listings, Local Health Department merit, Personnel Council meeting minutes, the compensation schedule, employment information and the application for employment, and links to other sites for information on personnel

management topics, federal legislation related to employment, and E.E.O. Civil Rights information.

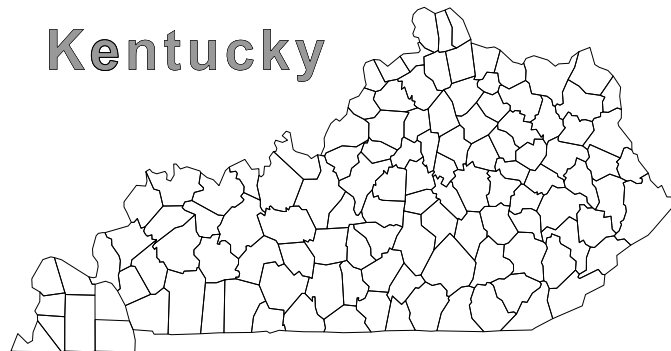
Recruiting

There are two ways to recruit at the local health department level. There is continuous open recruitment which means that the LHD has requested to continuously accept applications for a certain position, and can do so at all times. There is also closed recruitment, which means the LHD advertises for a position during a specified time frame for the receipt of applications. Once reviewed, applications are evaluated and the names of those applicants meeting the requirements are placed on a register from which a local health department may make an offer of employment. Applications for that position can only be accepted during the time of the advertising. Once the advertising end date has expired, applications for that position can no longer be accepted.

The state Division of LHD Operations Local Personnel Section can be reached at: (502) 564-3796 or FAX (502) 564-0993.

CLASSIFICATION PLAN FOR LOCAL HEALTH DEPARTMENTS OF KENTUCKY

The Administrative Regulation [902 KAR 8:060](http://chfs.ky.gov/dph/info/lhd/lhpb.htm) establishes the Classification and Compensation Plans for LHDs. Available at <http://chfs.ky.gov/dph/info/lhd/lhpb.htm>



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CONFLICT OF INTEREST AND WORK OUTSIDE THE LOCAL HEALTH DEPARTMENT

Work Outside The Local Health Department

Local Health Department staff members are expected to devote their work activities primarily to functions of the local health department. Staff may, however, engage in extramural activities provided that such activities do not detract from the performance of their duties and responsibilities to the local health department and/or create conflict of interest¹ or appearance of conflict of interest with their assigned local health department responsibilities. Extramural activities means any work not performed as a local health department employee, whether or not compensated. It is expected that such extramural activities will take place outside of the staff member's designated work time².

Conflict Of Interest

Staff shall not engage in any activities or outside employment that may result in a conflict of interest. A conflict of interest exists if financial interests or other opportunities for personal benefit may exert a substantial and improper influence upon an employee's professional judgment in exercising any local health department duty or responsibility. Staff shall not use their positions to secure anything of value, financial gain, or personal benefit that would not ordinarily accrue to them in the performance of their official duties. Nor shall they accept any compensation from any other agency or individual for work performed in the course of their employment by the local health department, except under the limited circumstances permitted in a formal conflict of interest management agreement. See Administrative Regulation 902 KAR 8:160 Section 3, Conflict of Interests.

Guidelines To Prevent Conflict Of Interest

Conflict of Interest and Work Outside the Local Health Department.

- A. Extramural activities.³
Staff engaging in extramural activities must avoid the use of information or procedures that may involve a conflict of interest with assigned local health department responsibilities. Failure to adequately perform local health department responsibilities due to involvement in extramural activities is considered a neglect of duty and may result in disciplinary action up to and including termination, regardless of whether the activity is approved.
- B. Prior approval.
Requests to engage in extramural activities during a time normally designated as schedule work time must have the prior approval of the appointing authority. Extramural activities conducted outside of designated work time which present a potential conflict of interest must be reported.
- C. Use of Local Health Department name.
Staff members engaging in extramural activities shall not use the name of the local health department, its units, or any other local health department service in such a manner as to suggest institutional endorsement or support of a non-local health

¹ Conflict of interest - Situation where financial interests or other opportunities for personal benefit may exert a substantial or improper influence upon an employee's professional judgment in exercising a local health department duty or responsibility.

² Designated work time - Hours of day agreed upon by supervisor when an employee will perform work for the local health department.

³ Extramural activities - Any work not performed as a Local Health Department employee, whether or not compensated.

department enterprise, product, or service. Neither business cards bearing the local health department name, address, telephone numbers nor local health department stationery is to be used in such a manner as to suggest institutional endorsement or support of a non-local health department enterprise, product, or service.

EMPLOYEE CONFLICT OF INTERESTS AND ETHICS ISSUES

The Administrative Regulation [902 KAR 8:160](#), Section 3 defines conflict of interests for LHD employment.

In addition, the following shall not be allowed:

A local health department employee who is employed by or related to a WIC vendor shall not process the WIC vendor application, monitor, or revalidate food instruments for that vendor.

EMPLOYEE ETHIC CONSIDERATIONS

The following employee ethic considerations/guidelines were developed by the Kentucky Registered Sanitarian Examining Committee for Kentucky Registered Sanitarian Ethics. These guidelines are generally applicable to all employees of the LHD.

ETHICAL CONSIDERATIONS FOR ACCEPTANCE OF GIFTS

The following are guidelines developed by the [Executive Branch Ethics Commission](#) concerning the acceptance of gifts by state employees. *Even though these guidelines were developed for state employees, they are applicable to all public health governmental employees.* It is extremely important that all employees are aware of the law in this sensitive area.

1. The Basic Rule: An employee, his spouse and his dependent children are prohibited from accepting gifts totaling a value of more than \$25 in a single calendar year, or travel expenses, meals, alcoholic beverages, lodging or honoraria of any value, from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the state agency for which the employee works.
2. Gifts To An Agency: Gifts that may not be accepted by an employee also may not be accepted by a state agency if the agency has a business, regulatory, or influential relationship with the gift giver.
3. In-House Gift Policies: Some agencies within the executive branch may have in-house policies regarding the acceptance of gifts. Such agencies must, at a minimum, comply

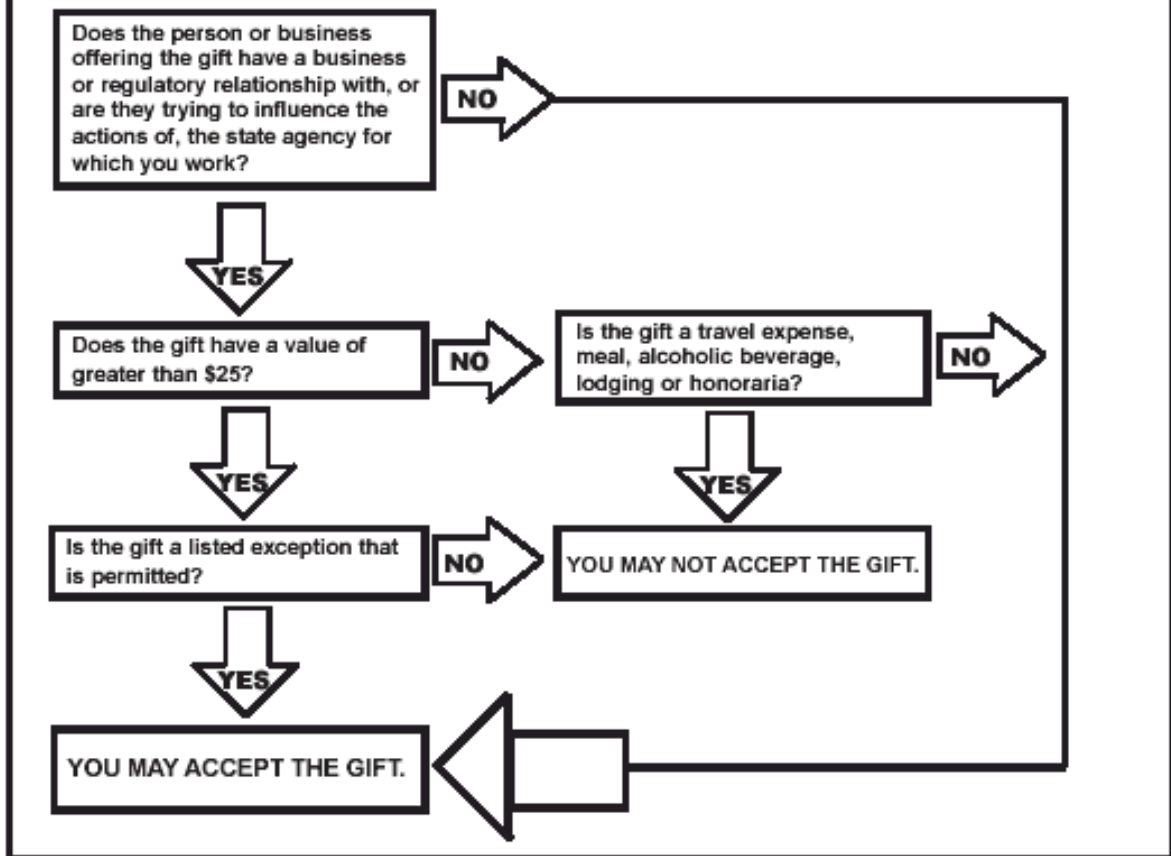
with the gifts law in [KRS 11A](#), but are not prohibited from implementing more restrictive policies in addition to the gifts law.

Gifts Which Are Permitted

The following items are exceptions to the basic rule and may be accepted by an employee, spouse, or a dependent child:

- Coffee, soft drinks, pastries or similar refreshments;
- Food consumed at a public event to which 25 or more individuals are in attendance if the event is also open to participants other than members of the donor's industry;
- Meals, beverages and free admission to an event, if the employee, as part of his official duty, is a speaker or has a significant role in the program;
- A campaign contribution to an employee's own campaign if in compliance with the campaign finance laws;
- A gift from a family member who is not acting as intermediary for a person from whom the gift would otherwise be prohibited;
- Food, clothing and shelter in times of natural disaster or other emergency;
- Door prizes, if open to other than state employees and members of the donor's industry and all participants have an equal chance of receiving the prize;
- Gifts that are modest, reasonable and customary, received on special occasions such as marriage or retirement;
- Awards of modest and reasonable value, such as plaques, that are publicly presented in recognition of public or charitable service;
- Prizes awarded based solely on skill, such as in golf or tennis tournaments, if such tournaments are open to participants other than state employees and members of the donor's industry;
- Meals at conferences or seminars which are included as part of the dues paid or the registration fee and are available to all attendees;
- A single copy of a textbook received by an educator for review;
- A gift or gratuity received by an employee working directly on an economic incentive package or seeking to bring tourism to the state that was not solicited by the employee and was accepted in the performance of the employee's official duty.

COMPLYING WITH THE GIFT RULE



DEFINITIONS

1. **“Does business with” or “doing business with”:**
Means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement.
[KRS 11A.010](#) (14)
2. **“Gift”:**
Means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received. [KRS 11A.010](#) (5)

[KRS 11A](#) is from the statutes governing the executive branch of state government. While not specifically applicable to local health departments, these guidelines reflect the department’s position for conduct and ethical considerations of local health department employees. For additional information, visit the [Executive Branch Ethics Commission](#) website.

What To Do With Gifts That Cannot Be Accepted

An employee who has received a gift that cannot be accepted shall return the item to the gift-giver or pay the gift-giver the market value of the gift. When it is not practical to return an item (something perishable), the item may be donated to charity or destroyed, and the disposal should be documented in writing and included in the employee’s personnel file.

EMPLOYMENT OF RELATIVES

The Administrative Regulation [902 KAR 8:160](#) Section 6 defines and lists restrictions in regards to the employment of relatives.

APPOINTMENT OF DOG WARDENS

In accordance with [KRS 258.195](#) the Fiscal Court shall employ a Dog Warden. A local health department employee shall not accept appointment or be employed as a Dog Warden.

- Local health department personnel, however, are encouraged to cooperate with other local officials, including Dog Wardens, in controlling stray dogs, confining dogs suspected of being rabid, or otherwise carrying out the provisions of [KRS 258.005 – KRS 258.085](#).

Reference – [902 KAR 8:160](#), Section 3 (f) CONFLICT OF INTEREST

PROMOTION, TRANSFER AND DEMOTION OF EMPLOYEES

The Administrative Regulation [902 KAR 8:090](#) describes the provision and requirements for promotion, transfer, and demotion of local health department employees.

POLITICAL ACTIVITIES

Local health department (LHD) employees are encouraged to register and vote. Since it is each citizen's responsibility to be informed about the issues affecting society, [KRS 118.035 \(2\)](#), the LHD allows no less than four hours of paid leave to vote during work hours.

It would be a violation of the statute to encourage or coerce an employee in any manner not to exercise his/her right to take four (4) hours paid leave to vote.

If the employee on his own decides to take less than four (4) hours paid leave to vote, this should be documented in writing and signed by the employee.

If a local health department, because of significant difficulty in providing needed services during this time, chooses to close the agency, then the following considerations should be addressed:

1. All employees must have requested the right to vote.
2. If an employee is not registered or chooses not to vote, the agency can not require the employee to use accumulated leave, if the health department chooses to close.
3. If the agency closes, the employee that did not request voting leave can be placed on special leave with pay during that time.

As protection from political pressures in the job, certain restrictions have been placed upon political activities.

The Administrative Regulation [902 KAR 8:130](#) lists the prohibited political activities by classified service employees.

Discrimination And Political Activities Prohibited

1. No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of his/her political or religious opinions or affiliations, or ethnic origin, sex, or disability or age.
2. The use or promise of political influence based upon an official position, whether actual or anticipated, of favorable or retaliatory treatment of an employee or position is a violation of law.
3. Employees may not be solicited to make contributions of money or services to political parties or candidates.
4. Employees may not be actively involved in partisan political campaigns or candidates for elective political office but may run for non-partisan office if no salary other than a per diem payment is involved.

The following guidelines are taken from [Opinions of the Attorney General](#) which interpret the political activities law.

Permitted Activities

1. Registration and voting: Classified employees may register and vote in any election.

2. Expression of opinions: All persons subject to the personnel rules have a right to privately express their opinions on all political subjects and candidates, but they may not take an active part in political management or political campaigns.
3. Contributions: It is lawful for classified employees to make voluntary cash contributions to political parties, candidates, or organizations. However, it is unlawful for classified employees to make contributions of goods, services, or labor.
4. Membership in political clubs: Classified employees may join a political club and attend its meetings but may not hold office or serve on committees of the club.
5. Attendance at political rallies, conventions, etc. are permitted and classified employees may participate in the selection of committeemen and committeewomen. Classified employees may vote at the lowest level of the selection process for delegates to the party conventions.
6. Political pictures and signs: It is lawful for classified employees to display political pictures or signs on their property.
7. Badges, buttons and stickers: It is lawful for classified employees to wear political badges or buttons and voluntarily display political stickers on their private automobiles, however, no political badges, buttons or other designations may be worn while on official duty or while the employee is conducting official business for the Commonwealth.
8. Precinct election officers: Classified employees may serve as precinct election officers at the polls.
9. Constitutional amendments, referenda, etc.: Classified employees may work actively for or against constitutional amendments, referenda or municipal ordinances in which they are interested, provided that local health department working time and resources are not used for this purpose.
10. Transporting voters: Classified employees on their own time may transport friends or relatives to the polls as a civic gesture, but may not transport voters to the polls as part of an organized service to a political party, faction, or candidate.

PROOF OF ACTIVE DRIVER'S LICENSE

Jobs That Require Possession Of Valid Driver's License

Certain positions that local health departments have in their agency require that the employee operate a motor vehicle and possess a valid operator's license. In those instances, it is imperative that the health departments make sure that the employee's driver's license be in "active status." Per Administrative Regulation [902 KAR 8:100](#), Section 1 Item (1) "an appointing authority may discipline an employee for: (f) failure to obtain or maintain a current license or certificate or other qualifications required by law or rule as a condition of continual employment."

Development Of LHD Policy

LHDs should develop a policy that requires each employee who operates a motor vehicle as an official part of their job to report to their supervisor or appointing authority any changes that may occur regarding their license, following receipt of the initial driving record. If the LHD discovers the employee's license has been suspended, revoked or for some reason taken away, immediate disciplinary procedures may be initiated. The employee with a suspended license may be moved to a position that does not require driving until the status of the license is obtained and a determination made of whether it can be reinstated within a reasonable time period.

Verification Of Valid Driver's License

If an employee has had his/her license suspended, he/she may still have the license - however, it may not be valid. In order to verify that all employees, who are required to operate a motor vehicle in order to perform the duties in their job description, have a valid driver's license, an agency may want to obtain a copy of the employee's driving record. The cost of obtaining verification of driver's license is \$3.00.

Driving records of LHD employees may be obtained by:

1. Submitting a request on LHD letterhead to:

TRANSPORTATION CABINET
DIVISION OF DRIVER'S LICENSING
STATE OFFICE BUILDING, 2ND FLOOR
FRANKFORT, KY 40622
ATT: ADM. SEC.

OR

2. Contacting the county circuit court clerk's office.

SCOPE OF PRACTICE

All employees of the local health department shall perform services according to current state and local protocols, standing orders, state laws or regulations and policies and procedures.

Documentation Requirements For Licensure And/Or Certification

Professionally trained staff shall provide a copy of current appropriate license and/or certification upon employment and following each licensure and/or certification period. If a license and/or certification is not required but documentation of education and/or experience is, such documentation shall be produced as required by the Department for Public Health Classification Plan for Local Health Departments. The LHD shall maintain a photocopy of the current license, certification and/or documented education and/or experience that can be verified at the Kentucky Board of Nursing website.

Nurse Licensure Compact - As of June 1, 2007 Kentucky became a compact state. As part of the Nurse Licensure Compact, (NLC), "a nurse whose primary state of residence is a compact state (home state) is issued a license by that state and no longer needs an additional license to practice in other compact states (remote states). By virtue of the compact, the licensee is granted the "multi-state privilege to practice" in other compact states." Thus a nurse residing in Kentucky will continue to apply for or maintain their nursing license in Kentucky and will continue to comply with Kentucky licensure deadline dates and continuing education requirements, etc. If a nurse living in another compact state, such as Tennessee, desires to work in Kentucky the Tennessee license will be accepted in Kentucky and therefore the nurse will not have to obtain a Kentucky license. The only exception is for ARNP's, who must maintain licensure in each state in which he/she works. If a nurse lives in a non-compact state, such as West Virginia, Ohio, Indiana or Illinois, but wishes to practice nursing in Kentucky, the nurse will have to obtain a Kentucky license. For further information see <http://kbn.ky.gov/nlc/>.

Statutes Requiring Licensure And/Or Certification Of LHD Staff

Professionally trained staff shall carry out activities and services appropriate and consistent with educational preparation and/or certification. Individuals with dual licensure are responsible for identifying and documenting the appropriate level of service and licensure. See the following Kentucky Revised Statutes for licensure and certification information:

See: [KRS 314.011\(8\)](#); [314.042\(8\)](#); and [201 KAR 20:057](#) for Kentucky Nursing Practice
[KY Board of Nursing - Scope of Practice Determination Guidelines](#)
[KBN Advisory Opinion Statement #15 - Role of Nurses in the Supervision and](#)
[Delegation of Nursing Acts to Unlicensed Personnel](#)
[KBN Advisory Opinion Statement #14 - Roles of Nurses in the Implementation of](#)
[Patient Care Orders](#)

Licensure

Advanced Registered Nurse Practitioner
Registered Nurse
Registered Nurse Applicant
Licensed Practical Nurse
Licensed Practical Nurse Applicant
Registered Dietitian

Statutes

[KRS 314.00](#)
[KRS 314.00](#)
[KRS 314.041](#)
[KRS 314.00](#)
[KRS 314.051](#)
[KRS 310.021](#)

Certified Nutritionist
Social Worker
Speech Therapist
Occupational Therapist
Physical Therapist
Physician
Physician Assistant
Environmentalist
Dental Hygienist
Dentist

[KRS 310.031](#)
[KRS 335.090 & KRS 335.100](#)
[KRS 334a](#)
[KRS 319A.080](#)
[KRS 327.050](#)
[KRS 311.571](#)
[KRS 311.844](#)
[KRS 223.030](#)
[KRS 313.00](#)
[KRS 313.00](#)

Other Staff Requirements

Certain professional staff such as laboratory technicians, dental assistants, and medical technicians have educational requirements that are addressed in the Classification Plan for LHDs. In addition to the entry level educational requirements, the classifications have certification requirements. The LHD shall maintain documentation of certification, education, specialized training and on the job training as appropriate.

Support staff directly involved with patient services, such as community health workers, support services associates, clinical assistants, outreach workers and resource persons shall carry out those activities and services for which they have received formal or on-the-job training consistent with their job description. Documentation of appropriate training and assessment of competency shall be maintained in the employee's personnel file.

STAFF TRAINING

(Including Annual Required Trainings)

All new local health department (LHD) staff shall receive orientation regarding the organization and function of local health departments, as well as training and instruction on their specific job duties. At a minimum a core training program for all staff shall consist of the following elements:

1. Review of local health department policies, handbook by supervisory, personnel, and management staff.
2. Review of Health Insurance Portability and Accountability Act (HIPAA) requirements pertaining to LHDs, confidentiality requirements and Employee Agreement;
3. Explanation of job duties by supervisory staff;
4. Observation of job duties performed by staff in the same job position within the health department, or when not available within the organization, observation at another health department;
5. Discussion of the local health department's role, function, and responsibilities within the community by supervisory and/or management staff; brief overview of basic manuals/references in use by the local health department and location of these manuals/references;

6. Observation of the job duties of other service providers when appropriate, in order to provide the new employee with an understanding of the job responsibilities and functions of other staff and an understanding of the organization; and
7. Participation in professional training mandated by the Cabinet for Health and Family Services. Local health departments have the opportunity for input as to the effectiveness of these training programs and may make suggestions to the Cabinet for improving such programs.
8. Feedback from supervisory staff on the employee's progress. Feedback/discussion shall be both verbal, which shall be intermittent as needed, and written which shall occur at a minimum of six months as reflected in the probationary evaluation; the employee shall also have the opportunity to discuss any questions or concerns he/she may have about the job or the local health department.

NEW EMPLOYEE ORIENTATION

Purpose

Each new employee should receive an extensive orientation acquainting the employee with the general operation of the LHD and the specific job responsibilities and duties of the position. New employee orientation is a critical component in the overall staff training process. The major goal of orientation is to help the new employee learn about their job responsibilities and to prepare them to be competent members of the health department.

Employee Handbook

A part of the orientation process should include the employee receiving a handbook pertaining to the LHD operational procedures and guidelines.

New Employee Orientation

The following link <http://chfs.ky.gov/dph/info/lhd/lhpb.htm> to "Checklist For New Employee Orientation" has sample orientation forms that may be used to assist the health department and employee. These listings may be altered to fit the needs of the local health department or the LHD may develop and use their own orientation forms.

Each area of the orientation form is to be checked and signed by the appropriate staff and the new employee and placed in the employee's file.

The orientation may be conducted by staff of the LHD Personnel Office, by the supervisor of the incoming employee or by different staff covering specific areas.

IDENTIFICATION CARDS FOR LOCAL HEALTH DEPARTMENT (LHD) EMPLOYEES

Local Health Department Employees

All local health department employees shall wear identification (ID) cards that identify employees as official representatives of the health department.

Employees On Extended Leave Or Terminated

When employment is terminated or when an employee is placed on an extended leave of absence, the ID card shall be collected and/or destroyed by the LHD Director. An employee's lump sum payment for accumulated annual leave may be held by the LHD until the employee who has resigned, retired, or been dismissed, returns his/her ID card, agency credit cards, keys to buildings and automobiles, or other agency property in the possession of the employee, in accordance with [902 KAR 8:080](#), Section 11 (3).

Staff Providing Services Within The Health Department

ID cards worn by employees providing services within the health department facility(ies) shall contain at a minimum the first name and professional discipline of the employee.

Staff Providing Services Outside The LHD Facility

ID cards worn by staff who provide services outside the facility shall contain at a minimum the name and professional discipline of the employee, the name of the local health department, and a recent photograph of the employee on the front of the card.

Personal Data

Personal data, as appropriate, may also be contained on the card.

Cost

The cost of the photograph and encasing the ID card in plastic shall be borne by the local health department.

DRUG-FREE WORKPLACE ANTI-DRUG ABUSE ACT

Recipients Of Federal Funds Requirements

In 1988, the United States Congress enacted the [Anti-Drug Abuse Act](#) (P.L. 100-690) which requires recipients of federal funds to certify that they have met requirements designed to promote a drug-free workplace. In compliance with this Act, local health department employees are notified that:

“The unlawful manufacture, distribution, dispensation, possession or use of any controlled substance is strictly prohibited in the workplace and any employee found to be in violation will be subject to disciplinary action by the Appointing Authority for misconduct which may include sanctions up to and including dismissal from local health department service, in accordance with administrative regulation.”

Drug-Free Awareness Programs/Health Insurance Coverage

Each agency will continue to improve drug-free awareness programs through cooperation with local and/or state agencies to eradicate the dangers that drugs in the workplace create for employees. Health insurance programs provide coverage for employees referred to or seeking treatment for drug and alcohol related problems.

Reporting Convictions Of Drug Statute Violations Occurring In Workplace

Employees are notified that compliance with drug-free workplace requirements is a condition of continued employment with an agency. Each employee is obligated to report any conviction he/she receives as a result of a violation of any criminal drug statute violation occurring in the workplace within five (5) days of such conviction. Failure to report a conviction may result in disciplinary action. Such a report is to be made to the employee's Appointing Authority and is required by federal law and the agency is obligated to report such conviction to the federal grantor within ten (10) days after it receives notice.

Violation Penalties

Employees found to be in violation of drug-free workplace requirements may face disciplinary action up to and including dismissal or may be required to satisfactorily participate in a drug abuse assistance or treatment program.

Employees who have questions concerning this directive are encouraged to contact their supervisor or appointing authority.

DRUG-FREE WORKPLACE ACT REQUIREMENTS

Local health departments shall comply with the [“Drug-Free Workplace Act of 1988”](#) by taking the following steps:

1. Publish and give a policy statement ([elaws - Drug-Free Workplace Advisor](#)) to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
2. Establish a drug-free awareness program to make employees aware of:
 - a. The dangers of drug abuse in the workplace;
 - b. The policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations.
3. Notify employees that as a condition of employment, the employee must:
 - a. Abide by the terms of the policy statement; and

- b. Notify the employer, within five calendar days, if he or she is convicted of a criminal drug violation in the workplace.
4. Notify the Department for Public Health within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
5. Impose a penalty on — or require satisfactory participation in a drug abuse assistance or rehabilitation program by — any employee who is convicted of a reportable workplace drug conviction.
6. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the Act.

Certification Of Compliance

The annual MOA with the Department for Public Health must include a certification of compliance with the above stated requirements of the ["Drug-Free Workplace Act of 1988."](#)

SEXUAL HARASSMENT

Federal And State Laws Prohibition

Federal and state laws prohibit unwelcome sexual advances, requests for sexual acts or favors (with or without accompanying promises, threats, or reciprocal favors or actions), or other verbal or physical conduct of a sexual nature that has the purpose of or creates a hostile or offensive working environment. Examples of prohibited conduct include, but are not limited to, lewd or sexually suggestive comments; off-color language or jokes of a sexual nature; slurs and other verbal, graphic or physical conduct relating to an individual's gender; or any display of sexually explicit pictures, greeting cards, articles, books, magazines, photographs or cartoons. Employees are strictly prohibited from using agency equipment to view and distribute sexually offensive material.

Filing A Sexual Harassment Complaint

Any employee who has a complaint of sexual harassment at work by anyone, including supervisors, co-workers, visitors, clients or customers should immediately bring the problem to the attention of agency management personnel. Employees may notify another supervisor if the complaint involves the employee's immediate supervisor. Sexual harassment complaints may also be filed with the Equal Employment Opportunity Commission.

Responsibility Of Management

Management personnel will promptly and carefully investigate all complaints of sexual harassment. Employees shall be assured that they will be free from any and all reprisal or retaliation from filing such complaints. Supervisors may face legal action in both their professional and personal capacities should retaliation occur.

VIOLENCE IN THE WORKPLACE

No Tolerance Policy

The local health department does not tolerate any actions that threaten its employees. Management personnel will deal with any such action immediately. This includes verbal and physical harassment, verbal and physical threats and any actions that may cause others to feel unsafe in the workplace.

Responsibility Of Management

Management personnel are responsible for protecting staff from what could be a dangerous situation in the workplace. Emergency procedures are to be developed and staff trained on how to deal with violent situations.

If a violent act should occur, management personnel will investigate and take appropriate action. Also, it is important for the local health department to provide employees affected, supportive and/or counseling services.

If an employee is the responsible party, the appointing authority may place the employee on leave using accumulated leave credit or immediately suspend the employee without pay.

Employee's Responsibility For Reporting

All employees are responsible for reporting to management any threatening actions whenever they occur.

FAMILY AND MEDICAL LEAVE

Family Medical Leave Act

The [Family Medical Leave Act](#) (FMLA) is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity. It was intended that the Act accomplish these purposes in a manner that accommodates the legitimate interests of the employers, as well as minimize the potential for employment discrimination on the basis of sex, while promoting equal employment opportunity for men and women.

Employee Eligibility Criteria

To be eligible for FMLA benefits, an employee must:

1. Have worked for an agency for a total of at least 12 months; and
2. Have worked or been on paid leave at least 1,250 hours in the 12 months immediately preceding the first day of Family Medical Leave (FML).

Leave Entitlement

A covered employer must grant an eligible employee up to a total of 12 workweeks of leave during any 12-month period for one or more of the following reasons:

- For the birth or placement of a child for adoption or foster care. Federal regulations state that a combined total of up to twelve 12 weeks shall be granted to an eligible husband and wife who work for the same employer.
- To care for an immediate family member (spouse, child, or parent) with a serious health condition;

- To take medical leave when the employee is unable to work because of a serious health condition.
- For any “qualifying exigency” which arises out of a covered servicemember’s (the employee’s eligible family member) active duty status or impending call to active duty.

Additionally, an eligible employee may be granted up to a total of 26 workweeks of leave during any 12-month period for the following reason;

- To care for an eligible family member that is a covered servicemember, and who has suffered a serious injury or illness incurred in the line of duty. This leave extends protection to additional family members (i.e. next of kin) beyond those who may take FML for other qualifying reasons.

An employee may elect not to use FML until that employee has utilized all of his accrued sick and annual leave (with the exception that an employee may request, in writing, to retain up to 10 sick days). If an employee uses paid leave for a qualifying condition, the up to 12 weeks of FML is not taken from that employee's FML availability until the leave is designated as FML.

During this time, however, the employee is afforded the rights and protections of the FMLA. It is important to note that an employee may request qualifying leave to be designated FML at any time (even if the employee is still using paid leave). The employer is responsible for designating if an employee's use of paid leave counts as FMLA leave, based on information provided from the employee.

Intermittent Leave

Under certain circumstances, employees may take leave in blocks of time, or by reducing their normal daily or weekly work schedule. Intermittent leave for the birth or placement of a child for adoption or foster care is subject to the employer’s approval. Leave due to an employee’s own medical condition, or that of a family member, may be taken on an intermittent basis when deemed medically necessary to do so.

Advance Notice And Medical Certification

The employee may be required to provide advance leave notice and medical certification or other supporting documentation. Request for leave may be denied if requirements are not met.

- The employee ordinarily must provide advance notice when the leave is “foreseeable.”
- A LHD may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report in order to return to work.
- A LHD may require certification of a covered servicemember’s active duty status or impending call to active duty to support a request for leave because of any “qualifying exigency.”

Job Benefits And Protection

- A covered employer is required to maintain the employer’s contribution for health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the

employee had continued to work. Local health department employees are provided group life insurance while on FML. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums above the employer's while on leave.

- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Unlawful Acts By Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.

PRIVACY AND SECURITY OF PROTECTED HEALTH, CONFIDENTIAL AND SENSITIVE INFORMATION GUIDELINES

The Local Health Department (LHD), in each of its organizational components, and by each of its organizational components, and by each of its agents or employees, will act as a responsible steward of all information. The LHD will take reasonable and prudent measures to insure the privacy and security of protected health, confidential and sensitive information. All medical information will be handled in accordance with applicable law, this includes but is not limited to ["The Health Insurance Portability and Accountability Act of 1996,"](#) other applicable Federal Law, the [Kentucky Revised Statutes](#) and the regulations promulgated thereunder. Medical information will only be collected, used, distributed or disclosed for the betterment of public or individual health and in support of the payment, integrity, accountability, reliability, quality and delivery of health services.

At all times, every employee will strive to protect the confidentiality, integrity and accuracy of all information maintained by the LHD in any form. It is the responsibility of every employee of the LHD, whether or not they may be a classified or non-classified employee, a personal service contracted employee, a volunteer, a co-op, an intern, or a contractual entity or its employees, to diligently safeguard protected health, confidential and sensitive information. Each person engaged in the duties of the LHD shall be deemed charged with the obligation to comply fully with their assigned tasks but to do so while limiting their access to, and knowledge of, protected health, confidential and sensitive information to the minimum necessary for the accurate and timely completion of their duties.

Protected health, confidential and sensitive information is information that is either protected by law or is of such personal or private nature that it is normally not treated as public record. Neither the LHD, nor any of its agents or employees will obtain, maintain, release, use, disclose or distribute any information in any form in contravention of currently applicable State or Federal law and the regulations promulgated thereunder. Employees who violate these standards may be subject to progressively severe disciplinary action up to and including dismissal.

The Privacy and Security Agreement lists and briefly describes many of the major laws and regulations pertaining to confidential information. There is information not covered specifically by these laws, which is also sensitive and must be safeguarded because of the potential for its misuse. Examples include, but are not limited to the following: social security number, home address, home telephone number, date of birth, height, weight, race, gender, political affiliation, employment history and any other information of a purely personal nature. In addition, a LHD or office may also have additional requirements necessary to protect information relative to that organizational unit's necessary functions.

Responsibility

An employee's responsibility extends to all situations where employees are accessing, using, circulating, maintaining, disclosing and disposing of reports or documents, or is given information through conversations or observations that contain protected confidential or sensitive information.

Specifically:

1. Employees shall not release protected health, confidential and sensitive information to themselves or to other persons, entities or employees outside the scope of their duties. Such information may be in any form, e.g. verbal (discussions/conversations), paper or electronic.
2. Employees shall not seek access to, or inquire about protected health, confidential and sensitive information in excess of the minimum necessary to efficiently discharge the documented responsibilities within the scope of their duties.
3. At no time will employees allow the use of their USER ID and Password by another person to access computer data. Allowing access includes, but it is not limited to leaving a written notation of a USER ID or Password on or near a computer terminal. (See "Computer Security Use of Passwords" in this section (page **) for additional guidance on computer security.)
4. Employees shall familiarize themselves with the laws pertaining to confidential information described on the revised December 2002 "Local Health Department Employee Privacy and Security of Protected Health, Confidential and Sensitive Information Agreement" in order to comply with those restrictions.
5. Employees shall familiarize themselves with what types of information are considered protected health, confidential, personal or sensitive information and do their utmost to protect it. For an example, when documents or reports are circulated that contain such information, the sender will alert the receiver(s) to insure the confidentiality of the data.
6. Employees are not to include protected health, confidential, personal or sensitive information on site visit or other administrative reports/records or documents. If there is a need to address specific patient records, these records are to be addressed by code with specific identification provided separately via phone or via a separate key/listing, which is to be destroyed upon completion of the investigation.
7. Employees, when sending mail or other correspondence containing protected health, confidential, personal or sensitive information to any person, the sender will indicate "Personal and Confidential" on the envelope to insure that only the addressee opens it. Extreme caution shall be taken when mailing identifying information to assure that the envelopes or other mailing containers are securely closed and that the information is mailed to the correct location/address and addressed to the appropriate individual.
8. In cases when it is necessary to fax protected health, confidential, personal or sensitive information, employees are to take extreme caution to assure:
 - 1) The correct fax number is entered;
 - 2) The message or cover memo includes a confidentiality notice indicating the faxed material is for the sole use of the intended recipient and may contain confidential information; and
 - 3) That only an authorized person is available to receive the information.

9. Interviews with patients or family members where information of a personal and confidential nature such as medical histories, medical treatments, family income, etc. is discussed must be conducted in areas where patient privacy can be expected and maintained.
10. Computer screens with person specific data are not to be visible to unauthorized personnel or public areas.
11. When it is necessary to leave the computer/computer monitor for a short period of time during the workday, the computer shall be locked.
12. The computer/ shall be locked or logged off before leaving at the close of the workday.
13. Printouts or any hard copy records with person specific information shall be covered to prevent the identifying information from being exposed and accessible to unauthorized personnel.
14. Originals, copies, or excerpts from patient medical records shall be maintained in locked cabinets or locked storage areas when unattended.
15. Person specific data shall be discussed only with authorized personnel and then only within the context of providing patient care/services, assisting with a reporting, billing, record keeping, or specific health care management problem and should be discussed in a private location.
16. Person specific/patient information obtained through conversation or observation by employees of the LHD is confidential and such info shall not be disclosed without the individual's written consent, except as required by law.
17. Permission shall be obtained from the patient as to how and/or if the patient may be notified or reminded regarding appointments, billings or any other message regarding health department services.
18. Employees will take reasonable and appropriate measures to protect identifying numbers. Of particular concern is the social security number and date of birth. Because it appears on a myriad of documents and reports, it is one of the most difficult pieces of data to protect, but all employees should do their utmost to safeguard it.
19. When no specific guidance is provided regarding responding to requests for information and a written request for information is received, only release the information with the written authorization of the affected party.
20. When no specific guidance is provided regarding responding to an oral or unwritten request for information – where no written request for information is received – only release the information after verifying and documenting the authorization of the affected party.
21. Unless using encryption software approved by COT; whenever reasonable and practical, protected health, confidential, personal or sensitive information should not be included in e-mails.

22. All employees shall dispose of documents that contain protected, health, confidential, personal or sensitive information. Paper documents or reports shall be placed in a “shred” box that is removed from the work site and destroyed prior to disposal or recycling, rather than placing the documents in a regular solid waste or recycling receptacle. All protected, health, confidential, personal or sensitive information in electronic form must be erased or destroyed in a manner that prevents reconstruction prior to disposal.
23. All electronic or paper records with protected health, confidential or sensitive data shall be accessible only to authorized personnel; indexed; maintained in a secure location, and retained for only the period of time deemed necessary by the Records Retention Schedule. The retention period shall not be permanent unless authorized by Federal or State Law. (See Records Retention Schedule located in AR Volume I, Section X: Medical Records Management.)
24. Employees should understand there may be other information that must be protected that is not specifically listed in this procedure or on the “Local Health Department Employee Privacy and Security of Protected Health, Confidential and Sensitive Information Agreement” in AR Volume I, Section IV: Personnel. When in doubt, the employees should consult with their supervisor/health department director.
25. Employees shall not disclose protected health, confidential, personal or sensitive information even after their employment with the Health Department ceases. State and Federal law regarding protected health, confidential, personal or sensitive information also applies OUTSIDE the employment relationship and criminal or civil penalties including fines and imprisonment could apply.
26. Employees shall be informed that disregard of the privacy and security of protected health, confidential, personal or sensitive information might result in disciplinary action, up to and including dismissal. Additionally, employees may subject themselves to civil and criminal liability for the disclosure of confidential information to unauthorized persons. (See AR Volume I, Section IV: Personnel for further guidelines on the employee and agency responsibilities regarding the Health Insurance Portability and Accountability Act of 1996 [[HIPAA](#)]).

Procedure For “New” LHD Employees*

All new Health Department employees shall be given a copy of these guidelines and the revised “Local Health Department Employee Privacy and Security of Protected Health, Confidential and Sensitive Information Agreement” at orientation to sign. By signing the agreement, the employee is acknowledging he or she has read the agreement, understands the agreement, and agrees to abide by the terms of the agreement. The signed Agreement will be placed in the employee’s folder in the LHD Personnel File. (See HIPAA in AR Volume I, Section IV: Personnel.)

Procedure For “Current” LHD Employees*

All current employees will be provided a copy of this procedure and required to sign the “Local Health Department Employee Privacy and Security of Protected Health, Confidential and Sensitive Information Agreement”, which will be placed in their personnel file. (See HIPAA in AR Volume I, Section IV: Personnel.)

- * Includes all persons e.g. contracted employees, students, co-ops, interns, volunteers, etc., who may have access to protected health, confidential, or sensitive information.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)

Agency Responsibility

[HIPAA](#) addresses the following six (6) areas: Transaction Standards, Electronic Signatures, Code Sets, Security, Health Identifiers, and Privacy. The basic requirements of the privacy regulation apply to protect health information and individually identifiable health information, whether said information is oral or recorded in any form or medium – electronic or paper. A HIPAA Privacy notice must be posted in plain view in the local health department building(s), and copies shall be provided to patients.

Each agency must have policies and procedures in place to comply with the HIPAA statute and will provide guidance for employees, temporary staff and volunteers. Through contractual agreement, business associate agreement or confirmation of statutory role, each agency will ensure business partners are also HIPAA compliant.

Agency And Employee's Responsibility

The following statement should be included in each employee's performance plan, starting with the 2003 Plan:

"The employee shall be familiar with the HIPAA statute and protect protected health information (PHI) and other personal or sensitive information within their trust in the course of local health department (LHD) business by applying appropriate safeguards. You will share only the information required to deliver health department services. Personal or sensitive information overheard or seen by the employees will be kept confidential by not sharing it with others, on or off the work-site grounds."

All employees, contracted employees, volunteers, co-ops, students, and interns will sign a confidentiality agreement that includes HIPAA compliance as part of the condition of employment. The appointing authority shall take appropriate action to investigate allegations of HIPAA violation. A memo must be created for record that states: "This health department will use the state merit system as the basis for inquiry into HIPAA complaints related to staff." The following is a sample Confidentiality Agreement that is HIPAA compliant.

LOCAL HEALTH DEPARTMENT EMPLOYEE PRIVACY AND SECURITY OF PROTECTED HEALTH, CONFIDENTIAL AND SENSITIVE INFORMATION AGREEMENT

(Rev. Dec. 2002)

PLEASE PRINT:

Last Name, First Name, & M.I.

Social Security #

I understand that I may be allowed access to confidential information and/or records in order that I may perform my specific job duties. I further understand and agree that I am not to disclose confidential information and/or records without prior consent of the appropriate authority(ies) in the Local Health Department (LHD).

I understand all information pertaining to personal facts and circumstances obtained by health department staff shall be confidential. Any information that can be linked to a specific person through the patient's name, patient identifying number which is or contains his/her Social Security number, his/her address, or telephone number is deemed confidential. Further, I understand that information that would lead to identification of an individual must also be protected as Patient Health Information (PHI). Such information may be in the form of a person's personnel record, medical record, excerpts from the medical record, computer generated reports, computer disks, computer screens, copies of computer screens and conversations which identify the patient. All such information shall be safeguarded against access/use by unauthorized persons, and shall be stored out of sight when not in use.

I understand that identities of patients I see and patient specific information I learn from conversations or observations as an employee of the local health department are confidential. I will not disclose information about specific individuals without the individual's written consent, except in accordance with written standards or as provided by law. I also understand information may only be disclosed in statistical summarization or another form(s) that does not identify specific individuals. I understand that information provided to external agencies must have the same protections and that persons receiving such information must be aware of governing statutes and regulations.

I understand that all USER ID/Passwords to access computer data are issued on an individual basis. I further understand that I am solely responsible for all information obtained, through system access, using my unique identification. At no time will I allow use of my USERID/Password by another person.

I understand that accessing or releasing confidential information and/or records, or causing confidential information and/or records to be accessed or released, to myself, other individuals, clients, relatives, etc., outside the scope of my assigned job duties would constitute a violation of this agreement and may result in disciplinary action taken against me, up to and including dismissal. I further understand that employees may subject themselves to civil and criminal liability, as well as disciplinary action, for the disclosure of confidential information to unauthorized persons.

I understand that the following is not an exhaustive list of all confidential information, but is an attempt to include most of the major examples of such information. In the event of doubts about whether certain information is covered by confidentiality requirements, I understand that I should consult my supervisor.

Under **HIPAA**, an individual's health care information must be used by the LHD and its employees and agents only for legitimate health purposes like treatment and payment. **45 C.F.R. § 160.101 et seq. and specifically §§ 164.500, 164.501, 164.514** established standards for privacy of health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Health information that must be kept private and secure is called Protected Health Information (PHI). HIPAA establishes in Federal Laws the basic principle that an individual's medical records belong to that individual and, with certain exceptions, cannot be used, released or disclosed without the explicit permission of that individual or their legal guardian. This includes disclosing PHI in even casual or informal conversation not related to a legitimate health purpose (like treatment or payment) at any time whether at work or not. HIPAA gives patients/clients of the LHD programs and services the right to an explanation of their privacy rights, the right to see their medical records (with some exceptions), the right to request corrections to these records, the right to control the release of information from their records and the right to documented explanations of disclosures by the Cabinet and by others who may have access to this information. Those who violate the rules laid down by HIPAA are subject to federal penalties. For non-criminal **violations of the privacy standards, including disclosures made in error**, there are civil monetary penalties of \$100 per violation up to \$25,000 per year, per standard. Criminal penalties are imposed for violations of the statute that are done knowingly (on purpose) – **up to \$50,000 and one year in prison for obtaining or disclosing protected health information; up to \$100,000 and up to five years in prison for obtaining or disclosing protected health information under "false pretenses;" and up to \$250,000 and up to 10 years in prison for obtaining protected health information with the intent to sell, transfer or use it for commercial advantage, personal gain or malicious harm.**

Under **KRS 214.420**, all information in the possession of local health departments concerning persons tested for, having, or suspected of having sexually transmitted diseases, or identified in an epidemiologic investigation for sexually transmitted diseases, is strictly confidential. A general authorization for the release of medical or other information is not sufficient to authorize release of this information. Breach of this confidentiality is considered a violation under KRS 214.990.

Under **KRS 214.181**, no test results relating to human immunodeficiency virus are to be disclosed to unauthorized persons.

Information collected from patients pertaining to mental health, alcohol and drug abuse and domestic violence is protected and not to be released without specific written permission from the patient as cited in KRS 304.17A-555 Patient's Right to Privacy Regarding Mental Health and Chemical Dependency, and 42 CFR Part 2 Confidentiality of Alcohol and Drug Abuse Patient Records. KRS 403.160 allows only the court to determine if domestic violence or child abuse information may be disclosed.

I will _____ or will not _____ have access to information, records, or reports concerning persons provided services for Sexually Transmitted Diseases. I understand that data concerning these patients is not to be shared with anyone who is not assigned to STD activities.

Confidentiality of family planning services is required by **42 C.F.R. 59. Section 59.11** states: *"All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and may not be disclosed without the individual's consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals."* The confidentiality rules applicable to all programs or projects supported in whole or in part by federal financial assistance, whether by grant or by contract, are found at 42 C.F.R. § 50.310, which states: *"Information in the records or in the possession of programs or projects which is acquired in connection with the requirements of this subpart may not be disclosed in a form which permits the identification of an individual without the individual's consent except as may be necessary for the health of the individual or as may be necessary for the Secretary [of Health and Human Services] to monitor the activities of those programs or projects. In any event, any disclosure shall be subject to appropriate safeguards which minimize the likelihood of disclosures of personal information in an identifiable form."*

I understand that other types of information may also be protected by confidentiality, and that if in doubt as to confidentiality, I should not volunteer information before making certain that the information may be disclosed.

I also understand that this agreement is considered part of the employee evaluation process, will be reviewed at least annually, and will be filed in my personnel record. Furthermore, I understand that disclosure or intentional release of personal information against an individual's wishes may also subject me to civil liability, fines, and/or incarceration and that I will be prosecuted for any violation of these laws for which I am responsible.

I have read this agreement, understand it, and agree to comply with its terms. In addition, it is my responsibility to report violations of this agreement by any employee to my supervisor. I acknowledge I have had an opportunity to ask questions and I understand this information. I further agree it is my responsibility to assure the confidentiality of all information which has been issued to me in confidence even after my employment with the local health department ceases.

By affixing my signature to this document, I acknowledge that I have been apprised of the relevant laws, regulations, and policies concerning access, use, maintenance, and disclosure of confidential information and/or records which may be made available to me through my employment in the Local Health Department. I further agree that it is my responsibility to assure the confidentiality of all information that has been issued to me in confidence even after my employment with the agency has ended.

I have read the above, received a copy of the Local Health Department Confidentiality Policy and understand my responsibilities.

_____ Employee's Signature	_____ Date
_____ Supervisor's Signature	_____ Date
_____ Director Signature	_____ Date

Revised: 12-27-02

OSHA COMPLIANCE

All local health departments shall comply with applicable [Occupational Safety and Health Administration](#) (OSHA) laws and regulations. Health departments shall be required to develop written plans in the following areas:

1. Emergency evacuation procedures and fire prevention and control procedures (site/or facility specific).
2. An annual Bloodborne Pathogens Exposure Control Plan to include training of all employees, (training for employees is required upon initial employment and annually thereafter); annual evaluation of safe needle devices, adoption of universal or standard precautions, and logs of needle-stick injuries. For additional guidance on the Bloodborne Pathogens Control Plan, see the KDPH Guidelines for LHD Bloodborne Pathogen Exposure Control Plan for OSHA Compliance in the AR Volume II.
3. A hazard communication plan which identifies through material safety data sheets (MSDS) the hazards of chemicals in the workplace; precautions to reduce the likelihood of exposure; and actions to take in the event of exposure. There shall be an annual training program for employees on chemical hazards and all new employees shall receive training.
29 CFR 1910.1020 (d) (ii) (B) Material safety data sheets (MSDS) and paragraph (c) (5) (iv) records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years (1); and
Footnote (1) Material safety data sheets (MSDS) must be kept for those chemicals currently in use that are affected by the Hazard Communication Standard in accordance with 29 CFR 1910.1200 (g).
4. The OSHA 300A form, which is the Summary of Work-Related Injuries and Illnesses, **is to be posted from February 1st to April 30th** of the year following the year covered by the form. *Note that you post the Summary only, not the log.* All establishments covered by Part 1904 must complete this summary page, even if no work-related injuries or illnesses occurred during the year. It is to be signed by the LHD Director/Administrator.
5. A written Tuberculosis (TB) Infection Control which shall include:
 - Conducting a TB Risk Assessment annually and revise as necessary. Prevention and control efforts shall include policies and procedures for:
 - Identifying and treatment of all persons with TB disease.
 - Identifying contacts to persons with infectious TB, evaluation and treatment.
 - Testing high-risk groups for latent tuberculosis; offering therapy.
 - Reporting cases to state TB Program (RVCT).
 - Employee Medical Surveillance
 - 2-step PPD initially on persons > age 35, follow-up skin testing annual and exposure.
 - Employee education on evaluation and management of TB, personal protection and legal issues.

In the December 17, 2002, Federal Register (67 FR 77165-77170), OSHA announced its decision to add an occupational hearing loss column to OSHA's Form 300, Log of Work-Related Injuries and Illnesses. Modified Forms 300 and 300A will incorporate the additional

column M(5) Hearing Loss. Employers required to complete the injury and illness forms must begin to use these forms on January 1, 2004.

Each facility must have a copy of the [OSHA](#) Federal Requirements.

References and Internet Resource Links:

[Kentucky Department for Public Health TB Control](#)

Public Health Practice Reference (PHPR) _

Tuberculosis laws as found in [KRS 215](#), .511 through .600

The CDC [Core Curriculum on Tuberculosis \(2000\)](#)

[OSHA Office](#), Kentucky Labor Cabinet, Division of Education and Training: (502) 564-3536

[OSHA Bloodborne Pathogens and Needlestick Prevention](#)

TUITION ASSISTANCE AND EDUCATIONAL LEAVE

The Administrative Regulation [902 KAR 8:160](#) Sections 4 and 5 outline Tuition Assistance and Education Leave. The contract and forms can be found at <http://chfs.ky.gov/dph/info/lhd/lhph.htm> under forms.

WORK ASSIGNMENT – INABILITY/RELUCTANCE TO PERFORM

The Local Health Personnel Branch is frequently asked about the ramifications when an employee refuses to accept an assignment. The employee's decision regarding accepting or making work assignments is based on his or her moral, ethical and professional obligation to assume individual responsibility for his or her judgment and action. These refusals must not be taken lightly since it is the health department's obligation to ensure that patients are given safe, competent health care and that all customers receive good customer service. We recommend the following procedure to ensure that all potential employees and current employees understand the agency's expectations.

APPLICANTS

- Clearly state the job duties on the job description, P-65. We recommend you distribute the job description with applications. During the interview, duties should be discussed and a copy of the job description given to the applicant.

- Ask the applicant if there are any job duties listed that he/she may not be able to perform. If the applicant identifies such duties, rationale with supporting documentation should be requested.
- The agency may negotiate an alternate plan including reassignment to an area in which these assignments are least likely to be needed **if a vacancy exists**. In making the decision to negotiate an alternative plan, the agency must consider such issues as: Is there a job available in an area where this assignment is least likely to be needed? Are there other employees in the agency who can perform these job duties? Is this duty a large percentage of the essential functions of the job?
- Both parties should understand that the employee will retain responsibility for carrying out the alternate plan and/or assuring that the service is provided. Failure to do so may result in disciplinary action, up to and including dismissal.
- If an alternate plan cannot be negotiated, the applicant may be determined to be ineligible due to inability to carry out the required job responsibilities.

CURRENT EMPLOYEES

- An employee's inability/reluctance to accept a work assignment should be submitted to the supervisor in writing, with supporting documentation including a request and suggestions for an alternate plan that assures that services will be provided.
- Management staff must review the request and determine whether the agency can develop an alternate plan that assures services will be provided. It is imperative that requests be submitted in advance rather than at the time the service is needed whenever possible.
- The agency may negotiate an alternate plan that may include reassignment to an area in which these assignments are least likely to be needed **if a vacancy exists**. In making the decision to honor the request, the agency must consider such issues as: Is there a job available in an area where this assignment is least likely to be needed? Are there other employees in the agency who can perform these job duties? Is this duty a large percentage of the essential functions of the job?
- Both parties should understand that the employee will retain responsibility for carrying out the alternate plan and/or assuring that the service is provided. Failure to do so may result in disciplinary action, up to and including dismissal.
- Refusal to follow a previously negotiated alternative plan or to carry out assignment may be grounds for disciplinary action up to and including dismissal.

EXAMPLE: A family planning nurse refuses to dispense an Emergency Contraceptive Pill (ECP) when a patient presents for treatment. There was no prior written agreement between the employee and the agency. Assuming that the employee was fully aware of the job

duties and had filed no written request for refusal, the appointing authority may initiate disciplinary action.

GRIEVANCE/COMPLAINT PROCEDURES FOR ANY MEMBER OF THE PUBLIC OR PATIENT

All local health departments shall establish an internal grievance procedure to assure prompt and equitable resolution of complaints alleging discrimination, unfair or inappropriate treatment of any member of the public or any patient(s). These procedures shall be sufficiently broad to address complaints concerning medical/clinical and environmental health services and shall be in accordance with 902 KAR 8:160, Section 12.

Complaint procedures shall be developed to protect the rights of the complainant, to meet due process requirements, and assure compliance with federal laws and regulations governing equal opportunity, Americans with Disabilities Act (ADA), and participation in certain federal grant programs.

In addition, the following elements shall be included in the complaint procedure:

1. Complaints may be written, verbal, or anonymous. Complaints shall contain the name and address of the person filing the complaint, if the complaint is not anonymous. The following information shall be obtained on all complaints: (a) the date(s) the alleged incident occurred, (b) the location at which the alleged incident occurred, (c) the employee or contracted agent against which the complaint is filed, and (d) a description of the alleged incident.

A complaint shall be filed within 60 days of the alleged incident. However, Civil Rights and ADA grievances allow 180 days after the complainant becomes aware of the alleged violation.

EMPLOYEE GRIEVANCES AND COMPLAINTS

Occasionally employees are faced with situations that cannot be resolved through informal complaint processes. In such cases the employee may wish to file a formal grievance with his/her agency. The employee grievance procedure allows many matters to be resolved in-house through a formal structure designed to save employees and their agencies both time and unnecessary effort. All Local Health Departments shall establish an internal grievance policy per 902 KAR 8:160, Section 12.

Definition Of A Grievance

A grievance is a complaint filed by an employee which concerns some aspect of his/her conditions of employment over which the agency has control and which has been alleged to have occurred or which the employee has become aware of, through the exercise of due diligence, within thirty (30) days prior to filing.

Rights

Any employee in the classified service who believes that he/she has been subjected to unfair or unjust treatment concerning his/her conditions of employment may file a grievance.

An employee utilizing this procedure is entitled to file a grievance without interference, coercion, discrimination, or reprisal.

Actions Not Appropriate For Grievance Procedures

Actions which are appealable under Administrative Regulation [902 KAR 8:110](#) would not proceed through the grievance process but would be appealed directly to the Local Health Department Employment Personnel Council.

Procedures Should Include Provisions For:

- A grievance to be filed with an employee's immediate supervisor within thirty (30) days following alleged occurrence or the employee becoming aware, through the exercise of due diligence, of the action that is the subject of the grievance. If the action or conduct of the first line supervisor is the basis of an employee's grievance, the grievance may be filed with the second line supervisor.
- An employee to state in writing the basis of the grievance or complaint together with the corrective action desired. If an employee wishes to submit additional information or documentation, it should be attached to the grievance.
- Interviews by management/administrative staff/appropriate committee to evaluate or investigate the grievance outside of normal work hours. Compensatory time/paid overtime (as applicable to the position) for the grievant or for other employees.
- Interviews by management/administrative staff/appropriate committee to evaluate or investigate the grievance held with the grievant or other employees that do not require the use of leave time.
- Grievant to have a representative present during interviews with the grievant at each step of the grievance procedure.
- A grievance template is available at <http://chfs.ky.gov/dph/info/lhd/lhpb.htm>. Modify the template to fit your agency per regulation 902 KAR 8:160, Section 12.

PERSONNEL FILES

The local health department is the primary custodian of all employee personnel files. These files are subject to state and federal audit. They must be retained in accordance with the Records Retention Schedule. The current schedule, approved December 18, 2001, stipulates that these files may be destroyed 70 years from the date the individual was first employed. See AR Volume I, Section X: Medical Records Management Section for the Records Retention Schedule.

Generally, personnel files are maintained by the Human Resources (HR) Department. The files are to be secured at all times. While employees may review their own personnel files, an employee may view information in the file of another employee only on a "justifiable need-to-know basis." HIPAA privacy requirements apply to employee files.

General Personnel Files

General personnel files are accessible to an employee (for his/her own file), appointing authority, and immediate supervisor. These files for each employee usually contain:

- Job application.
- Job testing data, if applicable.
- Notification of appointment, including starting pay rate.
- Certification appointed form, if applicable (SSN's of other applicants must be redacted).
- Job description.
- Wage and Hour Exemption status form.
- Report of personnel actions approved or denied (P-2's).
- Performance evaluations.
- Disciplinary actions.
- Training records.
- Professional licensure, certification and/or education verifications.
- Confidentiality agreements.

Any information not specifically related to employee wage and hour status or job performance should be scrutinized to determine whether it reveals any private fact about an individual. If it does, it should be placed in a general confidential file rather than the personnel file.

General Confidential Files

General confidential files are accessible to employees, appointing authority, and HR Department. These files usually contain:

- Financial and credit information.
- Background investigation results.
- Records of participation in the agency's Employee Assistance Program (may go in medical file).
- Driver's license verification, any record checks and if applicable, car insurance verifications.
- Requests for educational financial assistance.

Medical Files

Medical files are extremely confidential and must be locked in a separate filing cabinet. These files usually contain an employee's:

- Reimbursement requests for medical expenses.
- Drug testing results.
- Post-offer physical examination results.
- Substance abuse rehabilitation records.
- Fitness for duty/return to work forms.
- Any documents relating to the FMLA or the ADA.
- Accident incident reports.

Immigration And Naturalization Services Form (I-9's)

INS or DOL officials may want to check the LHD files to see whether a Form I-9 is on file for every employee, whether the boxes are checked and whether any of the forms collected from immigrant workers have been allowed to go out-of-date. The inspector will look at recent hires first. An I-9 must be obtained within three (3) days after hiring. Since most of the information on the form is confidential and this is the only information the inspector will need to review, it is strongly recommended that a centralized file be kept that contains all I-9 forms. In addition to the I-9's for current employees, these forms must be retained for one (1) year after termination or three (3) years after date of hire, whichever is longer. The file should have three (3) categories: Current Employees, Terminated, and Suspense/Pending. Each category should be sorted by year, with the most recent on top.

Deficit Reduction Act of 2005

§6032 Employee Education About False Claims Recovery

Effective Date: 01/01/07

The purpose of this policy is to fulfill the terms of the Deficit Reduction Act which requires DPH to establish a policy which provides detailed information about the Federal Civil False Claims Act, the Federal Program Fraud Civil Remedies Act, state laws pertaining to false claims, and whistleblower protections under such laws.

1. FEDERAL CIVIL FALSE CLAIMS ACT

The Civil False Claims Act (31 U.S.C. §3729 *et seq.*) is a statute that imposes civil liability on any person who:

- knowingly presents, or causes to be presented, a false or fraudulent claim, record or statement for payment or approval,
- conspires to defraud the government by getting a false or fraudulent claim allowed or paid,
- uses a false record or statement to avoid or decrease an obligation to pay the Government,
- and other fraudulent acts enumerated in the statute.

The term "**knowingly**" as defined in the Civil False Claims Act ("FCA") includes a person who has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

The term "**claim**" includes any request or demand for money or property if the United States Government provides any portion of the money requested or demanded.

Potential civil liability under the FCA currently includes penalties of between five thousand five hundred and eleven thousand per claim, treble damages, and the costs of any civil action brought to recovery such penalties or damages.

The **Attorney General of the United States** is required to diligently investigate violations of the FCA, and may bring a civil action against a person. Before filing suit the Attorney General may issue an investigative demand requiring production of documents and written answers and oral testimony.

The FCA also provides for **Actions by Private Persons** (*qui tam* lawsuits) who can bring a civil action in the name of the government for a violation of the Act. Generally, the action may not be brought more than six years after the violation, but in no event more than ten. When the action is filed it remains under seal for at least sixty days. The United States Government may choose to intervene in the lawsuit and assume primary responsibility for prosecuting, dismissing or settling the action. If the Government chooses not to intervene, the private party who initiated the lawsuit has the right to conduct the action.

In the event the government proceeds with the lawsuit, the *qui tam* plaintiff may receive fifteen to twenty-five per cent of the proceeds of the action or settlement. If the *qui tam* plaintiff proceeds with the action without the government, the plaintiff may receive twenty-five to thirty per cent of the recovery. In either case, the plaintiff may also receive an amount for reasonable expenses plus reasonable attorneys' fees and costs.

If the civil action is frivolous, clearly vexatious or brought primarily for harassment, the plaintiff may have to pay the defendant its fees and costs. If the plaintiff planned or initiated the violation, the share of proceeds may be reduced and, if found guilty of a crime associated with the violation, no share will be awarded the plaintiff.

Whistleblower Protection. The Civil False Claims Act also provides for protection for employees from retaliation. An employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in terms and conditions of employment because of lawful acts conducted in furtherance of an action under the FCA may bring an action in Federal District Court seeking reinstatement, two times the amount of back pay plus interest, and other enumerated costs, damages, and fees.

2. FEDERAL PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

The Program Fraud Civil Remedies Act of 1986 ("Administrative Remedies for False Claims and Statements" at 38 U.S.C. §3801 *et seq.*) is a statute that establishes an administrative remedy against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent due to an assertion or omission to certain federal agencies (including the Department of Health and Human Services).

The term "**knows or has reason to know**" is defined in the Act as a person who has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

The term "**claim**" includes any request or demand for property or money, e.g., grants, loans, insurance or benefits, when the United States Government provides or will reimburse any portion of the money.

The authority, i.e., federal department, may investigate and with the Attorney General's approval commence proceedings if the claim is less than one hundred and fifty thousand dollars. A hearing must begin within six years from the submission of the claim. The **Act** allows for **civil monetary sanctions** to be imposed in administrative hearings, including penalties of five thousand five hundred dollars per claim and an assessment, in lieu of damages, of not more than twice the amount of the original claim.

3. State Medicaid False Claims Act

Kentucky law imposes criminal and civil penalties on any person who commits a fraudulent act on the Kentucky Medicaid Program. See KRS Chapter 205.8451 et seq. A "fraudulent act" includes those acts set forth in KRS 205.8463. Specifically, a person has committed a fraudulent act when the person (1) intentionally, knowingly, or wantonly makes, presents or causes to be made or presented to an employee or officer of the Cabinet for Health and Family Services any false, fictitious or fraudulent statement, representation or entry in any application, claim, report or document used in determining rights to any benefit or payment; (2) knowingly or wantonly devises a scheme or plans a scheme or artifice, or enters into an agreement, combination, or conspiracy to obtain or aid another in obtaining payments from any medical assistance program under KRS Chapter 205 by means of any fictitious, false, or fraudulent application, claim, report or document submitted to the Cabinet for Health and Family Services, or intentionally engages in conduct which advances the scheme or artifice; or (3) engages in any other act set forth in KRS 205.8463.

Any person who commits a fraudulent act as defined in KRS 205.8463 shall be guilty of anywhere from a Class A misdemeanor, imprisonment for not more than twelve (12) months and/or a fine of five hundred dollars (\$500) to a Class C felony, imprisonment for not less than five (5) years nor more than ten (10) years and/or a fine of not less than one thousand dollars (\$1,000) and not greater than ten thousand dollars (\$10,000) or double the offender's gain from commission of the offense, whichever is greater. See KRS 205.8463, 532.005, 532.030, 532.060, 532.090, 543.030 and 534.040. In addition to these penalties, any provider who has been found by a preponderance of the evidence in any administrative process to have knowingly submitted or caused claims to be submitted for payment for furnishing treatment, services or goods under a medical assistance program provided for under KRS Chapter 205, which payment the provider was not entitled to receive, shall be liable for restitution; civil payments and interest; legal fees; and costs of investigation and enforcement as well as be subject to removal as a participating provider for a specified period of time. See KRS 205.8467. The State shall also have a lien against all property of any provider or recipient who is found to have defrauded the Medicaid program for the amount equal to the sum defrauded plus any interest and penalties. See KRS 205.8471. The terms and conditions of a State imposed lien is set forth in KRS 205.8471.

Any person who knows or has reasonable cause to believe that a fraudulent act and/or a violation of KRS Chapter 205 has been or is being committed by any person, corporation, or entity, shall notify the state Medicaid Fraud Control Unit or the Medicaid Fraud and Abuse hotline and provide the information required under KRS 205.8465(1). See KRS 205.8465. Any person making such a notification regarding the offenses of another shall not be liable in any civil or criminal action based on the report if the report was made in good faith. See KRS 205.8465. Additionally, no employer shall, without just cause, discharge or in any manner discriminate or retaliate against any person who in good faith (1) makes a report

required or permitted by KRS 205.8451 to 205.8483 or (2) testifies, or is about to testify, in any proceeding with regard to any report or investigation. See KRS 205.8465.

The state agency administering the Medicaid Program may also impose administrative sanctions on providers convicted under the Statute. See 907 KAR 1:671.

4. State Administrative Sanctions Against Medicaid Providers

Administrative sanctions also may be invoked against a Medicaid provider who has been determined to have engaged in unacceptable practices. See 907 KAR 1:671. “Unacceptable practices” means conduct by a Medicaid provider which constitutes “fraud” or “provider abuse” as defined in KRS 205.8451(2) or (8) or willful misrepresentation, and includes those practices identified in 907 KAR 1:671, Section 1, Paragraph (40). Specifically, unacceptable practices include, but are not limited to, presenting a false claim for services; submitting false information to obtain greater compensation than that to which the provider is entitled; submitting a claim by a provider terminated or excluded from the Medicaid Program; conversion; soliciting or accepting bribes or kickbacks; engaging in conspiracy, complicity or criminal syndication; failing to meet disclosure requirements; and other acts. See 907 KAR 1:671, Section 1, Paragraph (40).

“Fraud” means an intentional deception or misrepresentation made by a recipient or a provider with the knowledge that the deception could result in some unauthorized benefit to the recipient or provider or to some other person. See KRS 205.8451(2). It includes any act that constitutes fraud under applicable federal or state law. See KRS 205.8451(2).

“Provider abuse” means practices of a health care provider that are inconsistent with sound fiscal, business or medical practices and that result in unnecessary cost to the Medical Assistance Program established pursuant to KRS Chapter 205, or that result in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. See KRS 205.8451(8). It also includes practices that result in unnecessary cost to the Medical Assistance Program. See KRS 205.8451(8).

Sanctions may include but are not necessarily limited to liability for civil payments; restitution of overpayments; costs of investigation and enforcement of civil payments; legal fees; withholding of payments; and termination and exclusion from the Medicaid Program. See KRS 205.8467 and 907 KAR 1:671, Section 5, Paragraph (2).

The factors considered in determining sanctions or the duration of exclusion are as follows: (1) the number and nature of the unacceptable practice incidents; (2) the nature and extent of the adverse impact the violations had on recipients; (3) the amount of damages to the Medicaid Program; (4) past criminal records of activities involving a child, patient or adult in matters of abuse, neglect, sexual abuse, malpractice, or the personal involvement in fraud or another violation of 42 U.S.C. 1128a-b13, that may have been discovered as a result of the investigation of the unacceptable practice or other related material facts that may impact the health, safety and well-being of Medicaid recipients; and (5) the previous record of violations by the provider under Medicare, Medicaid or other program administered by the Department for Medicaid Services located within the Cabinet for Health and Family Services. See 907 KAR 1:671, Section 5, Paragraph (5).

5. State Insurance Fraud and Reporting Immunity Act

Kentucky provides for criminal and civil penalties related to insurance fraud and have established within the Office of Insurance a Division of Insurance Fraud Investigation to investigate and prosecute violations. See KRS 304.47-010 *et seq.* Generally speaking, a “fraudulent insurance act” includes, but is not necessarily limited to, acts made with knowledge and the intent of obtaining an undeserved economic benefit or to deny another a benefit in connection with an insurance transaction. A “fraudulent insurance act” includes all those acts set forth in KRS 304.47-020(1). Any person who commits a fraudulent act under KRS 304.47-020(1) is, depending upon the amount received and number of offenses committed, guilty of anywhere from a misdemeanor, imprisonment for not more than a year, and/or a fine, per occurrence, of not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater, to a felony, imprisonment for not less than ten (10) years nor more than twenty (20) years and/or a fine, per occurrence, of not more than ten thousand (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater. KRS 304.47-020. The person committing the fraudulent act also may be ordered to make restitution to any victim who suffered a monetary loss. KRS 304.47-020

In addition to criminal liability, a person who violates the statute may be liable for civil payments and damages and all reasonable investigation and litigation costs including attorneys’ fees. See KRS 304.47-020

The following individuals having knowledge or believing that a fraudulent insurance act or any other act or practice which may constitute a felony or misdemeanor under KRS 304.47-010 *et seq.* is being or has been committed **shall** notify the Insurance Fraud Division: (a) any professional practitioner licensed or regulated by the Commonwealth except as provided by law; (b) any private medical review committee; (c) any insurer, agent or other person licensed under this chapter; and (d) any employee of the persons named in paragraphs (a) to (c) above. See KRS 304.47-050. Any other person having knowledge or believing that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under KRS 304.47-010 *et seq.* is being or has been committed **may** notify the Insurance Fraud Division. See KRS 304.47-050.

Notwithstanding the above, any person having knowledge or believing that a fraudulent insurance act or any other act that may be prohibited under KRS 304.47-010 *et seq.* is being or has been committed, **may** notify any law enforcement agency. See KRS 304.47-050. Reporting to any other agency **does not** relieve those listed above of their mandatory duty to report to the Insurance Fraud Division. See KRS 304.47-050.

If the reporter acts without malice, fraud or gross negligence, the reporter is immune from any civil liability for libel, slander, or related cause of action arising out of the report. See KRS 304.47-050.

6. State Employment Protection Act

State employees who report violations of state or federal law or regulation are provided protection against retaliation or disciplinary action related to the report pursuant to the “Kentucky Whistleblower Act.” See KRS 61.101 *et seq.* The Act prohibits an employer from subjecting to reprisal or directly or indirectly using, or threatening to use, any official

authority or influence, in any manner whatsoever, which tends to discourage, restrain, depress, dissuade, deter, prevent, interfere with, coerce, or discriminate against any employee who in good faith reports, discloses, divulges, or otherwise brings to the attention of identified personnel any facts or information relative to an actual or suspected violation of any law, statute, executive order, administrative regulation, mandate, rule, or ordinance of the United States, the Commonwealth of Kentucky, or any of its political subdivisions, or any facts or information relative to actual or suspected mismanagement, waste, fraud, abuse of authority, or a substantial and specific danger to public health or safety. See KRS 61.102. Additionally, no employer shall subject to reprisal or discriminate against, or use any official authority or influence to cause reprisal or discrimination by others against, any person who supports, aids, or substantiates any employee who makes public any wrongdoing set forth above. See KRS 61.102.

“Employer” means the Commonwealth of Kentucky or any of its political subdivisions and any person authorized to act on behalf of the Commonwealth, or any of its political subdivisions, with respect to formulation of policy or the supervision, in a managerial capacity, of subordinate employees. See KRS 61.101.

“Identified personnel” means the Kentucky Legislative Ethics Commission, the Attorney General, the Auditor of Public Accounts, the General Assembly of the Commonwealth of Kentucky or any of its members or employees, the Legislative Research Commission or any of its committees, members or employees, the judiciary or any member or employee of the judiciary any law enforcement agency or its employees or any other appropriate body or authority. See KRS 61.102.

Employees alleging a violation of the Kentucky Whistleblower Act may bring a civil action for appropriate injunctive relief or punitive damages, or both, within ninety (90) days after the occurrence of the alleged violation. See KRS 61.103.

Employees alleging a violation of the Kentucky Whistleblower Act also are afforded administrative remedies granted by KRS Chapters 16, 18A, 78, 90, 95, 156 and other chapters of the Kentucky Revised Statutes. See KRS 61.103.

Notwithstanding the Kentucky Whistleblower Act, an employer may discipline or impose punitive action on an employee who discloses information which the employee knows (1) to be false or which the employee discloses with reckless disregard for its truth or falsity; (2) to be exempt from required disclosure under the provisions of KRS 61.870 or 61.884; or (3) is confidential under any other provision of law. See KRS 61.102.

7. State Computer Crime Act

Kentucky provides criminal penalties related to knowingly and willfully, directly or indirectly, accessing, causing to be accessed or attempting to access a computer without the effective consent of the owner, (1) for the purpose of devising or executing any scheme or artifice to defraud or obtaining money, property or services for themselves or another by means of false or fraudulent pretenses, representations or promises; (2) which results in loss or damage; or (3) which does not result in loss or damage. See KRS 434.840 *et seq.*

A “computer” includes any computer software, computer program, data, computer, computer system, computer network or any part thereof.” See KRS 434.840. For additional definitions of these terms, please see KRS 434.840.

Depending on the purpose for which the crime was committed and whether any loss or damage was sustained as a result of commission of the crime, any person convicted of a computer crime is guilty of anywhere from a Class B misdemeanor, imprisonment for not more than ninety (90) days and/or a fine of a two hundred fifty dollars (\$250) to a Class C felony, imprisonment for not less than five (5) years nor more than ten (10) years and/or fine of not less than one thousand dollars (\$1,000) and not greater than ten thousand dollars (\$10,000) or double the offender's gain from commission of the offense, whichever is greater. See KRS 434.840 *et seq.*, 532.005, 532.030, 532.060, 532.090, 543.030 and 534.040.

FAIR HEARINGS

All administrative hearing procedures are governed by [KRS Chapter 13B](#).

The following are eligible for a fair hearing:

- Persons who have been denied services;
- Persons whose participation in a service has been discontinued;
- Persons who have been notified to repay the cash value of improperly received WIC benefits;
- Persons who have not had a grievance resolved to their satisfaction; and
- Public and certain classes of citizens who have been adversely affected as a result of the interpretation/enforcement of an environmental law, regulation or ordinance.

The KRS Chapter 13B applies to all local health departments (LHDs) in Kentucky. A general, uniform hearing procedure for the Cabinet for Health and Family Services has been adopted, Administrative Regulation 902 KAR 1:400.

However, due to tighter federal time frames for fair hearings than is required by KRS Chapter 13B, the WIC Program's fair hearing policies for applicants, participants and vendors are governed by Administrative Regulation 902 KAR 4:040.

All requests for hearings shall be honored unless:

1. The request is withdrawn in writing by the requesting party or his/her representative;
2. The requesting party or his/her representative fails, without good cause, to appear at the originally scheduled hearing or any "make-up" hearing; or
3. The requesting party has already had a hearing on the issue in question and cannot provide evidence that circumstances have changed sufficiently to justify another hearing.

When a hearing request is received, the local health department shall in all cases:

1. Establish and maintain a hearing file documenting all correspondence and contacts with the party requesting a hearing; and
2. Notify the appropriate DPH division or branch of the hearing request.

Persons aggrieved by an action of the LHD may request an opportunity to present his/her views before the Cabinet or its designated agent. The procedures will be in accordance with 902 KAR 1:400 which sets forth a uniform hearing procedure for the Cabinet for Health and Family Services and/or any other applicable laws and regulations. The following are general procedures and time frames:

1. The requesting party or his/her representative has a right to a conference hearing if requested within ten (10) days of the date of the notice of proposed adverse action.

CIVIL RIGHTS ACT

If you believe that your right of privacy has been violated you can refer to the following website link for information on how to handle this situation:

<http://www.hhs.gov/ocr/civilrights/index.html>

<http://www.hhs.gov/ocr/civilrights/complaints/discrimhowtofile.pdf>

IDENTITY THEFT COMPLIANCE

M E M O R A N D U M

FROM:

DATE:

RE: Red Flags Rule compliance 11/1/09

The Red Flags rule is a Federal Trade Commission regulation aimed at preventing or mitigating identity theft associated with certain financial transactions. It was effective January 1, 2008, but full compliance and enforcement is required by November 1, 2009. Failure to comply may result in penalties not to exceed \$2,500 per incident.

To be subject to Red Flags Rule, an entity must be a “creditor” and must maintain “covered accounts” as defined in the regulation.

A “creditor” provides services in advance of receiving payment. Despite efforts of the AMA, the Federal Trade Commission continues to lump medical services providers under the broad title of creditors for the purposes of the Red Flags Rule.

“Covered accounts” are used for personal, family, or household purposes. They involve multiple payments or transactions, a continuing relationship, and a reasonable risk of identity theft.

Both DPH and LHDs meet the criteria and are, therefore, required to comply with the Red Flags Rule by implementing a written identity theft program that has reasonable written policies and procedures to identify, detect, and respond appropriately to red flags; to review the program not less than annually; and to exercise oversight of services providers.

Special considerations for health department require responses they develop involving the disclosure of health information must, at a minimum, comply with the HIPAA privacy rule. In addition, LHDs must not adopt policies and procedures that have the effect of denying or impeding services to any group based on race, color, or national origin even if the policies and procedures are not intended to treat the groups differently. Responding to red flags should not be structured in a way that denies services to individuals who are otherwise eligible for them or that undermines the LHDs ability to protect the public health.

Your identity theft program must be approved by your Board of health. Your board must be involved in the development, implementation, and administration of the program and _must reevaluate the program at least annually.

You must train your staff to implement the program effectively. Front desk staff will check IDs, billing staff can spot problems with social security numbers or mailing addresses, compliance officers can make decisions for unforeseen problems, clinicians can detect information from the patient that clashes with medical records. All staff should listen for patient comments that could indicate medical identity theft.

The Red Flags Rule also requires that you exercise appropriate and effective oversight of service provider contracts and/or agreements where they involve access to “covered account”. FTC guidance suggests that providers should ensure that service providers have their own written identity theft policies in place.

Again, the deadline for compliance was November 1, 2009. You should check the FTC’s website from time to time for additional information and enforcement policy.

COMPLIANCE WITH TITLE VI (Persons with Limited English Proficiency)

In order to ensure compliance with ["Title VI of the Civil Rights Act of 1964"](#), Policy Guidance Document: Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency ("[LEP Guidance](#)"), a LHD must ensure that a person identified as having a limited English language proficiency (LEP), where English is not the person’s primary language, and who is eligible for services in the LHD has meaningful access to the benefits. (Civil Rights brochures are located at: <http://chfs.ky.gov/dph/info/lhd/lhob.htm>)

LEP persons are defined as persons who cannot speak, read, write, or understand the English language at a level that permits them to interact effectively with providers. To facilitate the patient’s treatment and ensure effective communication to each patient enabling the understanding of his/her care and make informed choices, the LHD shall have interpreter services and/or other adaptive equipment made available to the individual or staff member.

In Order To Ensure That Appropriate Assistance Is Provided, A LHD Shall:

1. Assess
 - Conduct an assessment of the language needs of the population in the service area.
 - Identify the resources needed to provide effective language assistance.
 - Identify the location of the resources.
 - Identify for each patient their communication needs, taking into account the nature and extent of English language proficiency as well as the need for adaptive equipment.
 - Identify for each patient the points of contact during services where language assistance is likely needed.
2. Develop a Comprehensive Written PolicyEach LHD shall have a written policy which identifies policies and procedures for:
 - Identifying and assessing the language need of applicants/recipients.
 - Providing the range of language assistance options.
 - Providing notice of the right to free language assistance.

- Periodically training staff. Training staff on the written policy ensures it is understood and carried out. The training should:
 - Be part of the orientation training for each employee;
 - Be updated annually or biannually per agency policy; and
 - Ensure staff is trained on techniques for effective use of interpretive services.
- Monitoring the provision of assistance to the speech or hearing impaired and those with LEP. Conducting regular oversight of the language assistance program to ensure all persons have meaningful access to service. Following the oversight review, the LHD Director or designee should take appropriate action to resolve identified problem areas and update the written policy and training.
- Providing translated materials, if appropriate. A LHD with fewer than 100 applicants/recipients in a language group is not required to provide translated written materials.
- Hiring trained and competent bilingual staff.
- Hiring interpreters who are skilled and trained.
- Contracting with an outside interpreter service.
- Arranging for the services of voluntary community interpreters.
- Arranging for the use of a telephone language interpreter service such as the Language Line, which provides professional interpretation 24 hours a day.
- Each LHD should maintain a master list of names and phone numbers of available interpreters and make copies of this list available to LHD staff for quick access.

Interpreters

- Interpreters may be in the possession of a national interpreter certificate or verification of equivalent qualifications obtained in another state that demonstrates a proficiency level sufficient to meet the needs of the individual.
- Each interpreter shall sign a confidentiality statement prior to providing services. Signed statements shall be kept on file.
- Friends, family (including minor children), as well as individuals familiar with the LEP patient should not be used as interpreters. Should the LEP patient decline the free interpreter services and choose to use their own interpreter; the LHD staff must document in the LEP patient's medical record that the offer was declined and then whenever possible request that a qualified interpreter monitor the interaction either via telephone or in person, to ensure accurate interpretation occurs. If the LEP patient believes the interpreter provided is not sufficiently qualified to provide services, the individual or responsible party may request interpreter services of a higher skill level.
- If the LEP patient chooses a friend, family or other individual to provide interpretive services and the LHD believes the individual is not sufficiently qualified to interpret the medical terminology then the LHD may choose to use their own interpreter services.

Recommended Skills and Qualities of Interpreters:

- Speaking and listening proficiency in at least two languages
- Strong communication skills including listening, oral comprehension and speaking skills
- Able to document effectively when applicable
- Knowledge of medical terminology and procedures
- High level of cultural awareness and responsiveness

- Desire to facilitate communication between health care providers and LEP patients
- Ability to put aside personal beliefs, including political, cultural and religious beliefs and ideas
- Compassionate, but able to remain impartial
- Drive to continuously improve and perfect skills in working languages, interpretation techniques and medical vocabulary and procedures
- High attention to detail
- Ability to remain focused and attentive
- Ability to adhere to established professional code of ethics, protocols and confidentiality
- Ability to translate brief written text such as application forms, signage or medication labels

Examples Of Practices Which May Violate Title VI Are:

- Providing services to LEP persons that are more limited in scope or are lower in quality than those provided to other persons;
- Subjecting LEP persons to unreasonable delays in the delivery of services;
- Denying all or a part of the LEP patient's participation in a program or activity on the basis of limited English proficiency;
- Providing services to LEP persons that are not as effective as those provided to those who are proficient in English; or
- Failing to inform LEP persons of the right to receive free interpreter services and/or requiring LEP persons to provide their own interpreter.

COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

The Department of Public Health and all local health departments (LHDs) are committed to the full implementation of the "Americans with Disabilities Act" (ADA). It is the policy of the department to maximize the full inclusion and integration of people with disabilities in all aspects of employment and all programs, services and activities. LHDs shall ensure their services, facilities and practices conform with the requirements of ADA, and to the extent feasible, modify services, policies and practices to conform to the ADA requirements.

All employees must comply with the following policies regarding the ADA:

- Discrimination Prohibited: employees with disabilities who are otherwise qualified may not be discriminated against in any areas of employment including, but not limited to, job application and compensation procedures, fringe benefits available by virtue of employment and activities sponsored by the state.
- Limiting, Segregating, and Classifying: employees with disabilities shall not be limited, segregated, or classified in a way that adversely affects their employment opportunities or status.
- Contractual or Other Arrangements: LHDs will not participate in contractual or other arrangements or relationships that would subject qualified employees with disabilities to the discrimination prohibited by the ADA.
- Reasonable Accommodations: LHDs will make reasonable accommodation to the known physical or mental limitations of an otherwise qualified employee with a disability, unless it can be shown that the accommodation would impose an undue burden. After a qualified employee requests reasonable accommodation, all agencies will make every reasonable effort to find out what is needed and provide the appropriate accommodations. This is to be an interactive process with the agency consulting with the employee with a disability.
- Retaliation and Coercion: LHDs will not coerce, intimidate, threaten, harass, or interfere with any individual exercising or enjoying his/her rights under Title I of the ADA or because that individual aided or encouraged any other individual in the exercise of rights granted or protected by Title I of ADA. Employees may file a complaint as set forth in Employee Grievances or with the Office of Civil Rights.

APPENDIX

LHD ANNUAL TRAINING MODULES AVAILABLE ON “TRAIN”

<https://ky.train.org/DesktopShell.aspx>

- KY DPH Ergonomics Module – 1020100
- KY DPH Occupational Safety Health Administration (OSHA) Bloodborne Pathogen Part 1 Module – 1020108
- KY DPH Occupational Safety Health Administration (OSHA) Bloodborne Pathogen Part 2 Module – 1020108
- KY DPH Occupational Safety Health Administration (OSHA) TB Module Part 1 Module – 1020108
- KY DPH Occupational Safety Health Administration (OSHA) TB Module Part 2 Module – 1020108
- KY DPH HIPAA Employee Orientation Module – 1020107
- KY DPH Limited English Proficient (LEP) Persons Module – 1020091
- KY DPH Civil Rights Training Module – 1020093

TRAIN, the premier learning resource for professionals who protect the public's health. A free service of the [Public Health Foundation](http://www.train.org), www.train.org is part of the newly expanded TrainingFinder Real-time Affiliate Integrated Network (TRAIN).